App. F. IX-4

192 8.

File No. 37-27

*Previous References* ( N.P )

37-28 (25)

Serial Nos. 42, 49

*Later References*

Preserve

# General and Revenue Secretariat.

*Serial Nos.* 2

P.10
E

**Part B for** September 1928

SUBJECT

Acquisition of lands in Kumbalam
- Khalli Village, Davengere Tq

L 2057 dated 5-9-28

To The Deputy Commissioner,
Chitaldrug

16.9.28

General and Revenue Secretariat.

V.P File No. 37 of 1927.

Serial No. 42

From

The D.C. Chidambaram Dist

Letter no A.4. Acqn. 13/27-28 dated 15.6.28 stating that it is not possible to work the quarry unless the land adjoining it is acquired requesting that the acquisition of the land may be re-considered.

Kind ref is respectfully invited to the file placed below.

H.N'd the order.

The D.C. reports that this is the only quarry for supplying stones to Savagree & other villages and as such it can be taken as required for "public purpose"

Submitted for kind perusal & orders

D.I. 4/2/28

The main point that the quarry block is a private property seems to have been missed

"675"

In the application of [illegible] Mr. A.D.S. was asked to explain how it can be made out that the land is required for the purpose. It is stated that this is the only quarry supplying stones to Savagree & Dharmapuri [illegible] The Divisional Officer is expected to [illegible] the matter [illegible] Mr. Nicholson [illegible] personally [illegible] some [illegible] & [illegible] note

Note—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

295/P.24 6341 2-

App. F. III—2]

General and Revenue Secretariat. VP File No. 37 of 1927

Serial No.

both the Department wants to acquire the land as it has also been yielding a revenue of Rs 400/- This is for consideration.

CH Secy) 9/7/28

CHIEF SECRETARY. 9 JULY 1928

Do Land Secy with compliments In favour of Opinion as to whether the acqn may be regarded as one for a public purpose 11/7

In the first place the quarry being in the bed of such land belonging to the Govt ~~owner person~~, is ~~not~~ does not be ~~by~~ considered opinion to place before

Chief Secy with Compts 8/8

L.S.G.M)

CHIEF SECRETARY. 21 AUG. 1928

The D.C. may be informed that Govt are not in favour of acquiring the land under the provisions of the L.A. Regn.

Secnd Member) 23/8

OFFICE OF THE SECOND MEMBER OF COUNCIL 23 AUG. 1928 No. 1646

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

Secy 27/8

6341 3

App. F. III—21

General and Revenue Secretariat: V.P File No. 37 of 1927.

Serial No.

Map is sent for ratfl.

Attached by 41F

Than have 2 or 3 copies of Mr Ly. Remembrancer's note typed & one 2 copies bne.

49 Letter No. K 2057 S. 5-9-28 b- Re Dy Com. Cantt &c- State Govt are not in favour of acquiring the land under the L.A. Act

Q K 5/9

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

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G. R. S. III—3]

ROUTINE NOTES.

To [for permanent record]

*Tel. Address*—*Depcom*,
CHITALDRUG.

In reply, please refer to
No. A-4.Acqn: 13/27-28.
Enclosures.

OFFICE OF THE DEPUTY COMMISSIONER,
CHITALDRUG DISTRICT.

*Dated Chitaldrug*, 15th June 1928 *192*.

L 6341

V.P. 37-27-42.

FROM

The *Deputy Commissioner*,
*Chitaldrug District.*

To

The General Secretary to Government,
Bangalore.

Sir,

With reference to your letter No.L.6095/V.P.37-27-25 dated 31st March 1928 enquiring how the land proposed to be acquired in Kuntapalanahalli, Davangere Taluk for removing stones &c is for a public purpose, I have the honor to state that the Sub Division Officer, Davangere reports that it is the only quarry supplying stones to Davangere and other surrounding villages, realising a revenue of Rs 450 annually from this source and that unless this land is acquired to Government it is not possible to work this quarry in its present condition. Under the above circumstances, it may be considered that the land is required for a public purpose and the preliminary notifications kindly caused to be published for acquiring the land.

The Vernacular records are herewith sent for reference and kind return.

I have the honor to be,
SIR,
Your most obedient servant,

Try: Assistant Commissio
For Deputy Commissior
(Absent from station)

*N. B.*—Should routine notes be written on small slips, the notes must de copied, or slips pasted on this form.

WD 1886—GPB—1,50,000—25-21

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A. P. F. VI. G1]

SUBJECT.....

.....

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Section V.P.

File No. 37-27

Serial No. 49

No. L 2057

Price Recds

*Diary No. of letter replied to* 6341/27

General and Revenue Secretariat

( K.S.S )

*the* *192*

To The Dy. Collr. Chitaldrug

Dear Sir,

Date of issue 5. 9. 1928

Signed by M. D. K. S. Iyer

With ref. to the correspondence ending with your letter No. R.A. Reg. 13/27-28 of the 15th June 1928, regarding the acquisition of a portion out of S. No. 1 of Kunteshwarahalli village, Davangere Taluk, for the purpose of quarrying, I am directed to state that Govt. are not in favour of acquiring the land under the provisions of L.A. Act. The records are herewith returned. I have &c.

List of enclosures.....

Copied by .....

Examined by .....

*over*

WD0325—GPB—80,000—26-5-27

31.8.28

Chief Clerk

# O P I N I O N.

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In Kantajanahalli village in the Davanagere Taluk, a stone quarry exists in 3 acres Phut Karab of an occupied land Survey No.1 which is 19 acres 27 guntas in extent. This is reported to be the only quarry supplying stones to Davangere and other surrounding villages and the Revenue Department are realising a revenue of about Rs.450 annually from this source. The Khatedar seems to object to the earth and stones from the quarry being deposited on the culturable portion of his lands. Without doing this it is practically impossible to work the quarry and to get over the diffie culty it is proposed to acquire about 4 acres of land surrounding this quarry and the question that arises for consideration is whether the acquisition can be said to be for a "public purpose" under the Land Acquisition Regulation VII of 1894.

There is no definition of the expression "public purpose" in the Regulation but in Section 3 Cl.(f) it is said to include the provision of village sites. The word "includes" has an extending force and does not limit the meaning of the term to the substance of the definition (In the matter of Nasibun 8 Cal. p.536). Under Section 4, whenever it appears to the Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Deputy Commissioner has to cause public notice of the substance of such notification to be given at convenient places in the said locality. Thereupon

Thereupon under para (2) of Section 4 the officers of Government can enter upon land and do all acts necessary to ascertain whether the land is adopted for such purpose. When it appears to the Government that the land is needed for a public purpose, a declaration to that effect shall be made as prescribed in Section 6; and the proviso to Cl. (1) of Section 6 enacts that no such declaration shall be made unless the compensation be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Under Sub Section (3) of Section 6, the said declaration is made conclusive evidence that the land is needed for a public purpose. It is thus fairly clear that the Government is made the sole judge of what is a "public purpose" under the Regulation (See Ezra v Secretary of State 30 Cal at 77.) and the reason for this is that having regard to the conditions in the country, the needs of sound administration and the public weal, the Government should not be hampered by any refined distinction and legal subtleties, but must be left to interpret the expression "public purpose" in a wise and reasonably liberal spirit. (Per Chandavarker J in Hamabai v Secretary of State 39 Bom. at 286).

This does not however mean that the Government can declare any and every purpose to be a public purpose and a limitation seems to be imposed on the discretion by the fact that under Cl.(1) of Section 6, the purpose ought to be such as would justify the expenditure of public funds. A responsible Government therefore ought to use its discretion in declaring the acquisition to be for a public purpose, judicially and not arbitrarily.

The doctrine of eminent domain is that private

property may be appropriated to public use upon compensation being made, but it cannot be taken fo for strictly private purposes without the consent of the owner, whether compensation is made or not. The assertion of a right on the part of the legislature to take the property of an citizen and transfer it to anotner, even for a full compensation, where the public interest is not promoted thereby is claiming a despotic power and one inconsistent with every just principle and fundamental maxim of a free Government. The necessity that the use shall be public excludes the idea that property may be taken under semblance of public use and ultimately conveyed and appropriated to a private use. (15 Cylcopedia of Law and Procedure 579).

In Hemabai v Secretary of State (39 Bombay 279 at 295) Lord Dunedin delivering the judgment of the Privy Council approved of the view of Batchelor J, when he said "General definitions are I think, rather to be avoided where the avoidance is possible and I make no attempt to define precisely the extent of the phrase "public purposes" in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned." If therefore the purpose in view contemplates the public good, it seems clear that it must be a public purpose "where the legislature confers powers on any body to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good." (Per Lord Blackburn in Aye Harbour Trustees v Oswald L.R.8 A.C. 623).

If however the special benefit to be derived from the lands sought to be appropriated is wholly for private persons,' the use ~~of~~ is a private one and is not made a public use by the fact that the public has a theoretical right to use it or that the public will receive an incidental or prospective benefit therefrom (15 Cyclopedia 581). As expressed by Ra~~f~~allo J in In.re Eureka Basin Warehouse (96 N.Y. 42, 48) "the fact that the use to which the property is intended to be put, or the structure intended to be built thereon will tend incidentally to benefit the public by affording additional accommodation for business, commerce or manufactures, is not sufficient to bring the case within the operation of the right of eminent domain, so long as the structures are to remain under private ownership and control and no right to their use or to direct their management is conferred upon the public".

In the present case, it is seen that the quarry supposing the right to it vests in Government and not in the Khatedar is worked by Government for purposes of profit. The public have no right to the use of the quarry but they can only buy stones from the lessee of Government. It is the business of the lessee to see to the proper working of the quarry and he can make his own arrangements with the Khatedar for depositing earth and stones on the cultivable portion of the land. If the quarry belongs to Government, they cannot acquire the adjacent land for improving ~~t~~ their prospects of getting more revenue by way of working the quarry I cannot therefore bring myself to believe that the purpose of acquiring the land is for the

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public use. My reasons are shortly these:--

The legislature has vested a discretion in the Government to declare what is public purpose, knowing that it is necessary for the Government to use its discretion in acquiring any land which may be necessary for effectively performing their functions. The idea underlying this vesting of discretion in acquiring land compulsorily is that the convenience, health and safety of the public should override the private rights of citizens; in other words the rule of law respecting the rights and obligations should be subordinated to the public weal, to be determined by the wide and discretionary powers of executive Government. It will be frustrating the object of legislature if the Government were to declare any purpose as a public purpose and acquire any land for the private use of any person or to improve or augment the resources of revenue of Government, without putting that property for the use of the public at large i.e., for their convenience, safety, health &c. The Government exists for the benefit of its subjects and whatever conduces to that benefit must be a public purpose. Tested in the light of princple and authority, I am inclined to the view that the use of the adjacent land is not for a public purpose within the meaning of that expression in the Land Acquisition Regulation.

Legal Remembrancer.

16.8.1928.